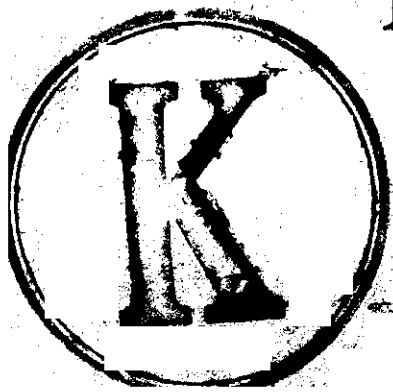




1946.

O Race Course
File No. licensing /46

Legal Dept.

A BRANCH

Subject:—

Opinions under the
Race-course licensing Act, 1912

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File No.

O. Race Course Licensing /46

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C O N T E N T S.

Legal Department File No. O. Race Licensing/46.

Sr.No.	R.I. / C.No.	Subject.	pages.
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Question under the Bombay Race
Course Licensing Act, 1912.

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|----|--------------------------|--|--|--------|
| 1. | <u>113-P</u>
29-6-46. | Question whether the insertion of a condition enabling Government to audit the totalisators, and the accounts, of the R.W.I.T.C. in the licence to be granted to it under Sec.4(2) of the Act would be ~~extra vires~~ of the said Act, or whether it would be repugnant to the provisions of the Indian Companies Act, 1913. | 1 - 4. | |
| 2. | <u>1227</u>
26-7-46. | <u>5667</u>
15-8-46. | Question whether by allowing the use of the race course to the Kirkee Gymkhana, the R.W.I.T.C. has contravened section 6 of the Race Course Licensing Act, 1912. | 5 - 8. |
| 3. | <u>8450</u>
26-11-46. | Question whether it is permissible in law for the R.W.I.T.C. to deduct a fixed commission from the money invested by the betting public on the totalisator and to receive betting fees from book makers. | 9-14. | |

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Office of the R.L.A.

Among the conditions which Government propose to include in the licence to be granted for the ensuing year to the Royal Western India Turf Club was that Government should ~~at~~ audit the totalizers and the accounts of the Club. In this connection the Secretary, R.W.I.T.C. observes :

"The accounts of the Club are audited by a firm of Chartered Accountants who are well-known all over India, and it is not understood why Government should deem it necessary to conduct their own audit. It is submitted that under the Companies Act, such a course is not permissible. Under the Act, no one can audit the accounts of a Company unless he is qualified as an auditor, and is appointed by the shareholders in a general meeting. "

H.D. points out that it is not Government's intention to replace the statutory audit under the Indian Companies Act, 1913, by Government audit; but that the Government proposal is merely by way of an additional check to ensure that Government were receiving the proper amount under the betting tax. The question referred to the R.L.A. for consideration is whether the insertion of a condition enabling Government to audit the totalizers and the accounts of the Turf Club in the licence to be granted to it under sub-section (2) of section 4 of the Bombay Race-Courses Licensing Act, 1912, would be intra vires of the said Act, or whether it would be repugnant to the provisions of the Indian Companies Act, 1913.

2. Sub-section (2) of section 4 of the Bombay Race-courses Licensing Act, 1912, provides that the Provincial Government may grant a licence subject to such conditions and for such period as it may think fit. Such conditions may provide for:-

- (a) the payment of a licence fee;
- (b) the amount of stakes which may be allotted for the different kinds of horses;
- (c) the measures to be taken for the training of persons to become jockeys; and
- (d) Such other matters, whether directly or indirectly connected with horse racing, for which, in the opinion of the Provincial Government, it is necessary or expedient to make provision in the licence.

The latter part of this sub-section was inserted by the Bombay Race-course Licensing (Amendment) Act, 1938

(Bom.X of 1938). At the time the amendment was inserted, the Hon'ble Mr. K.M. Munshi observed as follows:-

"..... The conditions which are sought to be imposed are these : (a) the payment of a licence fee; (b) the amount of stakes which may be allotted for different kinds of horses, (c) the measures to be taken for the training of persons to become jockeys, and (d) such other matters, whether directly or indirectly connected with horse-racing, for which, in the opinion of the Provincial Government, it is necessary or expedient to make provision in the licence. The last clause is a very wide one, which will permit Government hereafter to look into the affairs of the Club, which, as I told the House, is really a trustee of the money which it receives and which has to be used for the purposes connected with the encouragement of Indian industry and various other matters. Therefore, I need not take the time of the House by elaborating this point, and I hope the House will accept the first reading of the Bill".

'See Bombay Legis. Assembly Debates, Vol. 3-
part II, April-May 1938 p. 2735).

It is thus clear from the provisions of sub-section,

(2) of section 4 of the Act that Government can impose any
V.V.K. 11/7/56/

conditions in the licence in respect of such other matters whether directly or indirectly connected with horse-racing, for which, in their opinion, it is necessary or expedient to make provisions in the licence. Having regard to the fact that Government are vitally interested in the revenue obtained from the betting tax, it would be open to Government to insert a condition imposing Govt. audit independent of the statutory audit as an additional check to ensure that Government were receiving the proper amount under the betting tax. Such a condition in the licence will not, it seems, be repugnant to the Indian Companies Act, 1913, as the proposed Government audit is not intended to replace the statutory audit under the Companies Act. It is true that under the Companies Act there are separate provisions (sections 137(5) and 138(iv) enabling the Central Government to appoint competent inspectors to investigate the affairs of any company, but, those provisions cannot take away the power of the Provincial Government to impose in the licence such conditions as they may deem expedient under the Bombay Race-courses Licensing Act.

Id/- PNM.
dt/- 29/6/46/

Remembrancer of Legal Affairs.

U.R. to H..D. No. 116-P, dated the 29th June 1946.

Submitted.

2. The license granted to the Committee of the Kirkee Races under sub-section (2) of section 4 of the Bombay Race Courses Licensing Act, 1912 for the year 1945-46 expired on 30-6-1946. These races are held on the Poona Race Course with the permission of the R.W.I. Turf Club. The Kirkee Gymkhana Club applied for a fresh license ~~with them~~ for Kirkee races during the year ~~xxxxxxx~~ 1946.47 but this was held up pending the question of granting of the license to the R.W.I. Turf Club. The Gymkhana however held races on the 6th / 13th and 20th July although the license had expired on 30-6-1946. Permission from Government was obtained to hold races on the 13th and 20th July. For offending against the provisions of section 5 of the Act by holding races on the 6th July without the permission of Government the Kirkee Club is prepared to pay a fine of Rs. 200/- and it has been decided not to launch any prosecution against the Kirkee Club. The R.W.I. Turf Club has also contravened the provisions of section 6 of the Act in allowing the Kirkee Club the use of the Poona Race Course although a license was no longer in force. (If expired on 30-6-1946 p. 13 ante). The Secretary H.D. observes this :-

" It has separately been decided by Government that the Royal Western Indian Turf Club should be given a licence to hold races at Bombay and Poona race courses for the period from 1st July to 31st December 1946. This licence has not yet been given and the Club has allowed the Kirkee Gymkhana Club the use of the Poona race course although a licence in respect of the Poona race course was not in force. The question is whether by allowing the use of the race course to the Kirkee Gymkhana, the R.W.I.T.C. has contravened section 6 of the Race-course Licensing Act, 1912. This section lays down that a horse race cannot be held on any course for which a licence granted in accordance with section 4 is not in force. By subsequently granting the licence to the Turf Club for July, it may be held that Government has validated the action taken by the Turf Club and that no offence has been committed under section 6 of this Act.

Office of the R.L.A.

Seen and returned.

2. The view expressed by the Secretary, Home Department in his note dated the 24th July 1946 at pages 32-33 ante is correct.

Sd/- P.M.M.
dt/- 13/8/46/

Remembrancer of Legal Affairs.

U.O.R. to H.D. No. 5667¹, dated the 15th August 1946.

V.V.K. 11/7/56/

5C.

Office of the R.L.A.

In his letter dated 15-2-1945 addressed to the Secretary to Government, Home Department, Mr. Kisharchand Manchand of Lahore states that the Royal Western India Turf Club Limited, has been deducting a fixed commission from the money invested by the betting public on the totalisator and receiving betting fees from bookmakers. He wishes to know whether it is permissible in law for the Turf club to do so. The papers have been referred to the R.L.A. for advice and elucidation of the English law on the subject.

2. Anent the ~~same~~ deduction of commission by the Turf Club from the money paid into the totalisator, the English law on the subject is contained in clause (3) of section 3 of the Racecourse Betting Act, 1928 (18&19 Geo.5Ch.41). which lays down that the Racecourse Betting Control Board shall distribute or cause to be distributed the whole of the moneys staked by means of a totalisator on any race among the persons winning bets made by means of the totalisator on that race, after deducting or causing to be deducted such percentage of those moneys as the Board may from time to time determine either generally or with respect to any particular racecourse. Clause 4 of the section provides that the Racecourse Betting Control Board shall establish a fund known as the totalisator fund, to which shall be paid the percentage deducted of moneys staked by means of the totalisator, and any other moneys received by the Board.

The Indian law on the subject is contained in section 5 of the Bombay Betting Tax Act, 1925, which provides:

There shall be charged, levied and paid to the Government of Bombay out of all monies paid into any totalisator by way of stakes or bets a tax on backers hereinafter referred to as the totalisator tax at such rate not exceeding 10 per cent. Of every sum so paid as the Provincial

Government may from time to time notify in this behalf, and such portion of the monies so paid into a totalisator as is equal to the amount of the totalisator tax at the rate notified as aforesaid by the provincial Government in this behalf shall be deemed to have been paid by the backer on account of the totalisator tax and shall be received by the licensees on behalf of the Government of Bombay."

Section 8 enacts:

"(1) There shall, as from such date as may be notified by the provincial Government in this behalf, be charged, levied and paid to the Government of Bombay out of all monies paid or agreed to be paid to a licensed ~~horse~~ bookmaker by a backer in respect of a bet made in an enclosure set apart by the licensees in accordance with the provisions of the Bombay Racecourses Licensing Act, 1912, on any race, a tax hereinafter referred to as the betting tax, at such rate not exceeding 10 per cent. of all such monies as the provincial Government may notify in this behalf.

(2)"

There is no provision in this Act which authorises the licensees to deduct by way of

commission any sum out of the monies paid by backers into the totalisator, nor is there any such provision in the Bombay Racecourses Licensing Act, 1912.

Condition 3 of the Royal Western India Turf Club's license granted by Government in 1946 under section 4(2) of the Bombay Racecourses Licensing Act, 1912,

however, provides that on any day on which horse races are being held, the licensees may work or cause to be worked under their supervision the contrivance known as the totalisator subject to the following conditions:-

(a)

(b)

(c) Such other conditions as may from time to time be passed by the licensees with the approval of the Government, provided always that the Government may at any time during the currency of the license add to, amend, vary or rescind any of the conditions passed under this clause.

It is thus manifest that under clause (c) of condition 3 of the license granted by Government under section 4(2) of the Bombay Racecourses Licensing Act, 1912, it would be open to the licensees to make provisions with the approval of Government, for deducting a certain percentage of the monies staked on the totalisator. It is for H.D. to ascertain whether or not the Turf Club has obtained Government's approval to the deduction of a certain percentage from the monies staked on the totalisator.

3. Adverting to the levy of a fee from licensed bookmakers, the English law on the subject is contained in sub-section (1) of section 13 of the Betting and Lotteries Act, 1934 (24 & 25 Geo. 5 Ch. 58), which lays down that the occupier of any licensed track may make to a bookmaker or to any assistant accompanying a bookmaker to the track for the purpose of his business, any charge for admission to any particular part of the track not exceeding, in the case of a bookmaker, five times the amount, or, in the case of an assistant, the amount, of the highest charge made to members of the public for admission to that part of the track. Sub-section (2) of that section provides that if any charge other than a charge authorised by sub-section (1) is made to a bookmaker or an assistant of a bookmaker, or if any payment, valuable thing or favour, other than a charge so authorised, is demanded or received by or for the benefit of the occupier of a track as a consideration for facilities being given to a bookmaker for the carrying on of his business, the person immediately responsible and also the occupier of the track shall be guilty of an offence.

The Indian law on the subject is contained in the Bombay Racecourses Licensing Act, 1912, and the Bombay Betting Tax Act, 1925. Under

Under (1) of section 3 of the Bombay Racecourses Licensing Act, 1912, no horse-race can be held save on a racecourse for which a license for horse-racing granted in accordance with the provisions of the Act is in force. Under sub-section (1) of section 4, the owner, lessee, or occupier of any racecourse may apply to the Provincial Government for a license for horse-racing on such racecourse. Under sub-section (2) the Provincial Government may withhold such license or grant it subject to such conditions and for such period as it may think fit. Under sub-section (3) the Provincial Government may by such license authorize the licensee to grant, subject to such conditions as shall be specified by the Provincial Government in such license, a license or permit to any bookmaker for such period not exceeding the period for of the license granted to the licensee as the licensee may think fit, and under sub-section (4) the Provincial Government may at any time cancel any license granted under the section in the event of any breach of the conditions subject to which it was granted.

The expression "licensed bookmaker" as defined in clause (iv) of section 4 of the Bombay Betting Tax Act, 1925, means any person who carries on the business or vocation of or acts as a bookmaker or turf commission-agent under a license or permit issued by a licensee to enable him to carry on his business or vocation under the Bombay Racecourses Licensing Act, 1912, as specified in the license or permit. It is thus clear from the provisions of sub-section (3) of section 4 of the Bombay Racecourses Licensing Act, 1912. read with clause (v) of section 4 of the Bombay Betting Tax Act, 1925, that the power vests in the Provincial Government under the terms of the license granted under sub-section (2) to authorize the licensee to grant, subject to such conditions as may be specified in the license, a license or permit

to any bookmaker. It follows, therefore, that if no such authority is conferred on the licensee under the terms of the license granted to him by Government, he cannot grant a license or permit to any bookmaker. Condition 2 of the Royal Western India Turf Club's license granted by Government authorises the licensee to grant, subject to the following conditions, licenses or permits to bookmakers to register bets on the racecourse :-

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi) such other conditions as may from time to time be framed by the licensees with the approval of the Government.

It is not clear from the papers whether the Turf Club's levy of Rs. 1500/- from licensed bookmakers for each race meeting is in the nature of a license fee or in the nature of an extra charge as consideration for facilities being given to the bookmakers for carrying on their business on the Turf Club's premises. Whatever that be if such license fee or charge is levied from bookmakers without the previous approval of Government, it would, it seems, be in contravention of the provisions of condition stated above. Before any action is taken, it would be advisable for H.D. to call upon the Turf Club to explain under what authority a levy of Rs. 1500/- per race meeting is made from licensed bookmakers.

Id/- P.N.M.
dt/- 23/11/46/

Remembrancer of Legal Affairs .